WT 10-217

REQUEST FOR WAIVER
FOR SLOW GROWTH AUTHORITY

Pursuant to section 1.925 of the Federal Communications Commission's ("FCC" or "Commission") Rules, Pacific Gas and Electric Company ("PG&E") hereby requests a waiver of section 90.155 the FCC's rules in order to implement the facilities proposed in the accompanying application as part of its proposed wide-area private land mobile radio system on an extended implementation schedule similar to that allowed under section 90.629 for comparable systems in the 800/900 MHz bands. As explained herein, PG&E is requesting until June 30, 2013, to complete construction of site-based 450 MHz facilities licensed under Part 90, which deadline is well within the total five year implementation period provided for comparable 800/900 MHz systems under section 90.629 for such systems.[1]

A. Background

Headquartered in San Francisco, California, PG&E is one of the largest combination natural gas and electric utilities in the United States. PG&E provides natural gas service to approximately 4.2 million accounts, and electric service to approximately 5.1 million accounts, representing approximately 15 million people throughout PG&E's more than 74,000 square mile service territory in northern and central California. PG&E operates over 123,000 circuit miles of electric distribution lines, over 18,000 circuit miles of interconnected electric lines, over 40,000 miles of natural gas distribution pipelines and over 6,000 miles of natural gas transportation pipelines.

To support its safe and reliable provision of electric and natural gas service to the public over these extremely large areas, PG&E operates one of the largest privately owned and operated land mobile radio systems in the state of California. PG&E has two-way mobile radio systems operating in 47 of the 58 northern and central California counties, covering more than 74,000 square miles of PG&E's service territory. PG&E's two-way radio networks currently consist of more than 4,000 mobile and handheld (portable) radio units, more than 168 main transmitter sites and almost 30 large console control dispatch locations. Furthermore, there are approximately 300 small radio control stations located at service centers and control center locations used to access PG&E's various radio systems by supervisory and administrative personnel using desk set/remote control units. In addition to the gas and electric distribution and transmission operations, PG&E radio systems support extensive hydroelectric watershed and plant operations.

PG&E's various internal Lines of Business (*i.e.*, Gas & Electric Distribution, Gas & Electric Transmission, Hydro Generation, Customer Care and General Services) currently

[1] As explained herein, PG&E anticipates that it will file additional applications for new Part 90 site-based licenses or for modification of existing licenses as its network deployment progresses. PG&E will request, in conjunction with those applications, that any new authorizations be included within the grant of slow-growth authority that is being requested herein.

operate on discrete radio systems that are in need of replacement. These radio systems operate in disparate frequency bands (48 MHz, 150 MHz, 450 MHz, and 800 MHz) and function autonomously from one another. This inhibits interoperability among the Lines of Business, and does not readily permit introduction of advanced service features needed by PG&E's service personnel. The growth of these disparate systems over time created a condition where it became increasingly difficult for the company to migrate trucks and crews into an area in order to mobilize and assist during major storm events. Hours of effort were required to replace and reprogram radios to allow field crews to assist other teams, and in cross-connecting the various consoles together in order to link the various teams together.

B. PG&E's Radio Network Refresh Project

In order to address the shortcomings of its current land mobile radio network, PG&E undertook an extensive analysis of its existing communications assets, outage management data, and user requirements in order to improve the company's ability to respond to storm and fire conditions, and also to improve efficiency of routine operations throughout the company. Based on this analysis, PG&E's management initiated the Radio Network Refresh Project to develop a common communications platform on which all Lines of Business can rely.

PG&E's Radio Network Refresh Project will replace PG&E's (4) conventional voice mobile radio systems with a single integrated trunked radio network for all of the company's "push to talk" dispatch voice services. A single infrastructure system will improve quality and reliability of services; enhance security, simplify network management and operations, and lower overall operational costs by eliminating parallel systems. The new integrated trunked radio network will operate on a single (450 MHz) frequency band and will provide common "push to talk" voice services to all of PG&E's various Lines of Business.

Unlike PG&E's current legacy radio systems, the new networked radio repeater sites will be connected to centralized switching equipment to provide wide-area voice connectivity and enhanced radio services. Furthermore, the centralized switching equipment will provide system and network management services for controlling access to the system, determining performance levels of service, and configuring repeater radio sites and end-user equipment.

Once the new integrated trunked radio network is in place, each time a radio is powered up it will register with the central switching equipment which will authenticate the subscriber radio and allow the radio to roam automatically anywhere within the system's coverage area and still communicate with other radios sharing the same talk-group, regardless of the site(s) to which the other radios in that talk-group are registered. This means that the subscriber radios and control center operators are free from having to manually change the working channel as the subscriber moves through the network's geographic area. Additional features of the new network will include emergency declaration, priority access, and alias/caller identification (caller ID) that will add additional levels of functionality to the PG&E network and enhance the user's experience and safety.

The project plan calls for the new integrated trunked radio network to be implemented and funded in phases, based upon priorities jointly developed with user needs, condition of the

existing equipment, and spectrum development. Because no spectrum has been specifically allocated or reserved for utility operations such as this, PG&E was required to seek out a sufficient quantity of spectrum in the 450 MHz band from existing licensees. PG&E believes it has obtained most of the spectrum it will need in the 450 MHz band in order to migrate all of its existing land mobile services onto one frequency band. PG&E is relying on a combination of channels allocated on a geographic basis under Part 22 as well as site-based licenses under Part 90 that have been or are being coordinated for centralized trunking. PG&E also envisions needing to request modification of a number of its existing 450 MHz Part 90 licenses as it develops its frequency reuse plan. The entire project is being implemented over a three (3) to four (4) year period in five (5) distinct phases, as explained below.

C. Project Deployment Phases

Phase I of the Radio Network Refresh Project (approximately 2Q09 – 4Q10) will include the development of a comprehensive frequency re-use plan and fleet map, and the basic design/engineering of the network. In addition, Phase I implementation will focus on Gas Transmission by migrating all of Gas Transmission's 48 MHz mobile radios and console control stations to the new 450 MHz enhanced radio network in the 1st quarter of 2010.

Phase II (2Q10 - 3Q11) and Phase III (3Q10 – 4Q11) will focus on Hydro Generation and Electric Transmission by developing 450 MHz radio sites at PG&E's Hydro locations and areas of particular importance to Electric Transmission. Phases II and III are scheduled for completion in 2010 & 2011.

Phase IV (2Q11 – 4Q12, and which will run concurrent with the end of Phase III) will develop the rest of the network areas that have been deemed strategic to the safe and effective distribution of Gas and Electric services in Northern California. Phase IV is scheduled for completion by the end of 2012.

Phase V (4Q11 – 4Q12) will run current with Phase IV and will provide for stabilization and optimization of the network, along with decommissioning of the old systems.

The entire Radio Network Refresh Project is a large financial commitment for PG&E. The estimated cost over the next four years is projected at approximately $30 million. There are financial and project risks associated with such large capital projects. The benefits of the Radio Network Refresh Project (integration of disparate systems into a single networked radio system) will not be fully realized until all phases are completed, and there are financial risks to PG&E if the project is delayed or terminated before full completion. However, the financial risk can be mitigated by structuring the project into smaller; multiple phases to lower the financial burden in smaller amounts at any given time and by working with the various Lines of Business to implement the network according to their operational needs and ability to contribute capital towards its completion. For these and other reasons, PG&E will not necessarily be able to implement all of its new or modified Part 90 licenses within one year of license grant, as required under Section 90.155(b) of the FCC's Rules.

D. Waiver Request

PG&E notes that trunked systems of similar design and complexity may be authorized with construction periods up to five years in the land mobile bands above 800 MHz.[2] Similarly, land mobile systems licensed to Public Safety eligibles on any Part 90 frequency may be authorized with construction periods up to five years under the same conditions as apply to systems above 800 MHz.[3] It should be noted that in amending this rule specifically for the benefit of Public Safety eligibles, the FCC did not suggest that non-Public Safety eligibles could not qualify for construction periods of up to 5 years. Indeed, the rule change was proposed and adopted without any discussion of why it was limited to Public Safety eligibles. The policy reasons for the rule change are equally applicable to non-Public Safety systems:

> 12. . . .APCO argues that the distinction between systems operating above and below 800 MHz is about to change because the rules adopted in the *Refarming Proceeding* will lead to the availability of new narrowband equipment and the possibility of using trunked equipment. This will, in turn, lead to larger, more complex public safety systems, and applicants for these systems are unlikely to be able to secure approvals and funding prior to when they would ordinarily seek licenses from the Commission. Thus, APCO suggests that these systems should be treated in a similar fashion to the 800 MHz systems eligible for "slow growth" consideration under Section 90.629.
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> 13. We concur with APCO that eligible applicants for new public safety radio systems that require extensive planning, approval, funding, equipment acquisition, and construction, should be subject to the same regulatory requirements, regardless of the operating frequency(ies)....This rule change would account for recent changes in the Commission's rules below 800 MHz that create a new environment that fosters use of narrowband and trunked equipment. Further the proposed rules will promote consistency in procedural treatment of systems in the new environment below 800 MHz with treatment of systems that have been, and continue to be, in a similar environment above 800 MHz. ...[4]

The proposed amendment of Section 90.155(b) was adopted without further discussion or explanation. Thus, it can be assumed that the amendment was adopted for the very reasons given in the Notice of Proposed Rule Making.

PG&E submits that the same policy considerations behind this amendment to Section 90.155(b) support its request for an extension of construction authority. First, PG&E's

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2 47 C.F.R. §90.629.

3 47 C.F.R. §90.155(b).

4 Notice of Proposed Rulemaking in WT Docket No. 98-182, 13 FCC Rcd 21133 (1998), paras. 12-13 (footnotes omitted).

authorized system is a trunked, narrowband system designed to meet the efficiency standards established in the FCC's Refarming Proceeding. This system is more complex than land mobile systems typically licensed in the 450 MHz band, due to the extremely wide area involved and the use of trunking technology.[5] In addition, because of its status as a highly regulated utility providing essential public services, PG&E's planning, approval, funding, equipment acquisition, and construction are comparable to that of a public safety agency.[6] Finally, PG&E's present request is limited to a three-year construction period, which is well within the maximum permitted for trunked systems of comparable complexity in the bands above 800 MHz and for Public Safety systems below 800 MHz.

If the extension is not granted, PG&E will be forced to recoordinate these same channels and reapply for these same licenses, in which case PG&E will receive a twelve month construction period pursuant to Section 90.155(a). Moreover, loss of any of these channels would severely frustrate PG&E's ability to construct the wide area system needed to cover its electric utility service area. Thus, denial of this extension request will only serve to delay PG&E s ability to complete construction, add to its costs of implementing the system, jeopardize its wide area communications system, and increase the Commission's burden in re-processing these license applications.

For all of the foregoing reasons, PG&E hereby requests slow growth authority to complete construction of the 450 MHz facilities described in the accompanying application by June 30, 2013. A proposed extended implementation schedule is included as Exhibit 1.

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[5] Because of the use of trunking technology, PG&E's radio system must be licensed on exclusive frequency assignments. *Cf.* Southern California Gas Company, DA 99-2170, released October 14, 1999 (WTB), in which the Bureau denied slow-growth status for a six-site conventional land mobile system in the VHF band, noting that frequencies for conventional systems in the 150-174 MHz band are shared, so the licensee could reapply for its requested channels at such time as it had the necessary funding to construct the stations.

[6] In a number of proceedings, it has been recognized that utilities are part of the nation's critical infrastructure, and that they need reliable communications facilities to fulfill their public service obligations. See, *e.g.*, Second Report and Order and Further Notice of Proposed Rule Making in WT Docket No. 00-32, 17 FCC Rcd 3955 (2002), at paras. 33 ("The very nature of the services provided by [utilities] involve potential hazards whereby reliable radio communications is an essential tool in either avoiding the occurrence of such hazards, or responding to emergency circumstances. Furthermore, such entities need reliable communications in order to prevent or respond to disasters or crises affecting their service to the public. We also recognize that in the course of their duties, these entities will need to interact with the traditional public safety service providers, and the inability to do so may affect the ability of both groups of public safety entities to fulfill their missions.").

Exhibit 1
Proposed Slow Growth Implementation Schedule

Phase	Description	Time Frame
Phase I	Install 20 repeater sites, 2 radio-over-IP (RoIP) console positions, 30 radio control units, 300 mobiles, and 100 portables	2Q2009 – 4Q2010
Phase II	Install 25 repeater sites, 11 RoIP console positions, 30 radio control units, 350 mobiles, and 75 portables.	2Q2010 – 3Q2011
Phase III	Install 30 repeater sites, 35 radio control units, 325 mobiles, and 150 portables.	3Q2010 – 4Q2011
Phase IV	Install 33 repeater sites, 200 RoIP console positions, 400 radio control units, 3000 mobiles and 2000 portables.	2Q2011 – 4Q2012*
Phase V	Undertake coverage and capacity tuning, decommission old systems, finalize business processes, conduct field training on new system.	4Q2011 – 4Q2012*

* Although PG&E's implementation plan calls for all new sites to be activated by the end of 2012, PG&E is respectfully requesting slow growth authority through June 30, 2013, just to provide additional time in case there are any unforeseen contingencies delay completion of the network.

REQUEST FOR WAIVER OF DISCONTINUANCE RULES

Pursuant to Section 1.925 of the Commission's Rules, Pacific Gas and Electric Company ("PG&E") hereby requests a waiver of Sections 1.955(a)(3), 22.317 and 90.157(a) of the Commission's Rules to permit the temporary discontinuance of station operations on certain 450 MHz frequencies PG&E is acquiring and plans to incorporate into its new wide-area private land mobile radio ("PLMR") network that will be relied upon by PG&E in its provision of natural gas and electric utility service to the public.

I. Background

Headquartered in San Francisco, California, PG&E is one of the largest combination natural gas and electric utilities in the United States. PG&E provides natural gas service to approximately 4.2 million accounts, and electric service to approximately 5.1 million accounts, representing approximately 15 million people throughout PG&E's more than 74,000 square mile service territory in northern and central California. PG&E operates over 123,000 circuit miles of electric distribution lines, over 18,000 circuit miles of interconnected electric lines, over 40,000 miles of natural gas distribution pipelines and over 6,000 miles of natural gas transportation pipelines.

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PG&E's various internal Lines of Business (i.e., Gas & Electric Distribution, Gas & Electric Transmission, Hydro Generation, Customer Care and General Services) currently operate on discrete radio systems that are in need of replacement. These radio systems operate in disparate frequency bands (48 MHz, 150 MHz, 450 MHz, and 800 MHz) and function autonomously from one another. This inhibits interoperability among the Lines of Business, and does not readily permit introduction of advanced service features needed by PG&E's service personnel. The growth of these disparate systems over time created a condition where it became increasingly difficult for the company to migrate trucks and crews into an area in order to mobilize and assist during major storm events. Hours of effort were required to replace and reprogram radios to allow field crews to assist other teams, and in cross-connecting the various consoles together in order to link the various teams together.

A. PG&E's Radio Network Refresh Project

In order to address the shortcomings of its current land mobile radio network, PG&E undertook an extensive analysis of its existing communications assets, outage management data, and user requirements in order to improve the company's ability to respond to storm and fire conditions, and also to improve efficiency of routine operations throughout the company. Based on this analysis, PG&E's management initiated the Radio Network Refresh Project to develop a common communications platform on which all Lines of Business can rely.

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Unlike PG&E's current legacy radio systems, the new networked radio repeater sites will be connected to centralized switching equipment to provide wide-area voice connectivity and enhanced radio services. Furthermore, the centralized switching equipment will provide system and network management services for controlling access to the system, determining performance levels of service, and configuring repeater radio sites and end-user equipment.

Once the new integrated trunked radio network is in place, each time a radio is powered up it will register with the central switching equipment which will authenticate the subscriber radio and allow the radio to roam automatically anywhere within the system's coverage area and still communicate with other radios sharing the same talk-group, regardless of the site(s) to which the other radios in that talk-group are registered. This means that the subscriber radios and control center operators are free from having to manually change the working channel as the subscriber moves through the network's geographic area. Additional features of the new network will include emergency declaration, priority access, and alias/caller identification (caller ID) that will add additional levels of functionality to the PG&E network and enhance the user's experience and safety.

The project plan calls for the new integrated trunked radio network to be implemented and funded in phases, based upon priorities jointly developed with user needs, condition of the existing equipment, and spectrum development. Because no spectrum has been specifically allocated or reserved for utility operations such as this, PG&E was required to seek out a sufficient quantity of spectrum in the 450 MHz band from existing licensees. PG&E believes it has obtained most of the spectrum it will need in the 450 MHz band in order to migrate all of its existing land mobile services onto one frequency band. PG&E is relying on a combination of channels allocated on a geographic basis under Part 22 as well as site-based licenses under Part 90 that have been or are being coordinated for centralized trunking. PG&E also envisions needing to request modification of a number of its existing 450 MHz Part 90 licenses as it

develops its frequency reuse plan.The entire project is expected to be implemented over a three (3) to four (4) year period in five (5) distinct phases, as explained below.

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Phase V (4Q11 – 4Q12) will run current with Phase IV and will provide for stabilization and optimization of the network, along with decommissioning of the old systems.

The entire Radio Network Refresh Project is a large financial commitment for PG&E. The estimated cost over the next four years is projected at approximately $30 million. There are financial and project risks associated with such large capital projects. The benefits of the Radio Network Refresh Project (integration of disparate systems into a single networked radio system) will not be fully realized until all phases are completed, and there are financial risks to PG&E if the project is delayed or terminated before full completion. However, the financial risk can be mitigated by structuring the project into smaller; multiple phases to lower the financial burden in smaller amounts at any given time and by working with the various Lines of Business to implement the network according to their operational needs and ability to contribute capital towards its completion. For these and other reasons, PG&E will not be able to maintain continuous service on all of the frequencies it is acquiring pending the implementation of the entire network.

II. Request for Waiver of Discontinuance Rules

PG&E hereby requests waiver of Sections 1.955(a)(3), 22.317 and 90.157(a) of the Commission's Rules to permit the temporary discontinuance of station operations on certain 450 MHz frequencies PG&E is acquiring and plans to incorporate into its new land mobile radio network. The construction requirements for these licenses have been met by the former licensees. However, PG&E is not planning to acquire the radio facilities currently used by the former licensees. As explained above, PG&E is developing a new communications network that

will be designed around its unique operational requirements, and that takes into consideration the communications sites and facilities already available to PG&E. Thus, PG&E anticipates that service will be discontinued on these frequencies -- and potentially for up to the next four years -- while PG&E develops its new network infrastructure.[1]

Section 22.317 of the FCC's Rules provides that any station licensed under Part 22 that has not provided service to subscribers for 90 continuous days is considered to have been permanently discontinued. Licensees may have thirty additional days to resume operations so long as they notify the FCC prior to the end of the 90-day period and provide a date for the resumption of service. Similarly, under Section 90.157(a), any station licensed under Part 90 which has not been operated for one year or more is considered to have been permanently discontinued, and that an authorization shall cancel automatically upon permanent discontinuance of operation. Section 1.955(a)(3) provides generally that if a station is permanently discontinued, the license will terminate automatically.

PG&E will need to discontinue operations on the licenses listed on Exhibit A hereto for extended periods of time during its implementation of the new radio network.[2] The size and complexity of the new radio network are such that it would be impossible for PG&E to maintain continuous operation of the frequencies. PG&E has already taken significant steps in the development of the new network, which will further serve to limit the amount of time these channels are not in operation.

The FCC may grant a waiver of its rules when (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (2) in view of the unique or unusual circumstances of the case, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.[3] This waiver request meets these standards and should be granted.

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[1] Because of the complexities involved in migrating existing users from the systems operated by the former licensees, PG&E is leasing back to the former licensees, for a brief period of time, certain of the frequencies which have been assigned to PG&E. PG&E has also made arrangements for at least periodic use of these frequencies pending FCC action on the present waiver request. PG&E notes that the FCC has proposed to revise its rules on discontinuance of operation in the Wireless Radio Services and to permit licensees to request a longer discontinuance period "for good cause" and without the need for a rule waiver. Notice of Proposed Rulemaking and Order in WT Docket No. 10-112, FCC 10-86, released May 25, 2010.

[2] Pursuant to the FCC staff's recommendation, PG&E is initially filing this waiver request only with respect to a few of its Part 22 and Part 90 call signs. Upon FCC approval of the waivers and license modifications for these initial call signs, PG&E will file identical waiver requests and license modification applications for all of the other licenses identified in Exhibit A hereto.

[3] 47 C.F.R. § 1.925.

A. A Waiver Would Not Frustrate the Underlying Purposes of the Discontinuance Rules

The cancellation of PG&E's licenses would not serve the underlying purposes of the discontinuance rules. The primary purposes of these rules "are to prevent licensees from hoarding spectrum and to make unused spectrum available to other potential licensees."[4]

A waiver of the discontinuance rules would not result in the warehousing of spectrum by PG&E. As described below, PG&E will convert the licenses from the former licensees' commercial operations using older technology to a non-common carrier voice system used to support utility operations. The FCC has consistently determined that a waiver of the discontinuance rules is appropriate for a transition from one service to another, from one technology to another, or from one frequency to another.[5] In Winstar, the FCC waived the discontinuance rules for a licensee that sought to change the type of service offered on newly acquired spectrum.[6] The licensee acquired 850 MHz of Local Multipoint Distribution Service spectrum through a spectrum disaggregation.[7] Although the former licensee had used the spectrum to provide non-common carrier multipoint video distribution service, the new licensee sought to convert the spectrum to common carrier services.[8] The FCC found "no public benefit in requiring service to continue" and noted that "the ability of licensees to make the transition between one type of service to another is in keeping with the Commission's stated goals" for this geographic-area spectrum.[9]

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[4] In re Danny's Two Way Communications, Inc., File No. 24956-CD-P/01-90, Memorandum Opinion and Order, 9 FCC Rcd 3192, 3193 ¶ 8 (1994) [hereinafter Danny's Two Way Communications].

[5] See, e.g., In the Matter of New York State Electric & Gas Corporation, Order, 22 FCC Rcd 1787 (2007) (granting waiver so that the requesting utility could transition to a new integrated internal radio system); In re Winstar Wireless Fiber Corp., Order, 14 FCC Rcd 118, 120 ¶ 4 (1999) [hereinafter Winstar Wireless]; In re Improving Public Safety Communications in the 800 MHz Band; Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels; WT Docket No. 02-55, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, 15073 ¶ 198 n.516 (2004) (waiving the discontinuance rule for "Nextel and non-Nextel stations that have been shut down in order to accommodate our rebanding plan.") [hereinafter 800 MHz Report and Order].

[6] Winstar Wireless, 14 FCC Rcd at 120 ¶ 4.

[7] Id. at 118-19 ¶ 2.

[8] Id. at 120 ¶ 4.

[9] Id.

PG&E warrants a waiver because it will undergo a similar transition to a new service, new technology, and new frequencies. As with Winstar, PG&E has acquired these licenses through assignment. PG&E plans to convert the licenses from the former licensees' common carrier paging system to a non-common carrier voice system. The assignment also involves a transition to PG&E's wide area integrated utility network.

A waiver is also appropriate because PG&E has taken concrete steps to operate on these licenses. In Winstar Wireless, the FCC waived the discontinuance rule in part because the licensee "has already ordered the necessary . . . equipment and plans to complete installation as soon as possible."[10] Similarly, PG&E has retained an engineering firm to assist with the design of the radio system, the preparation of a frequency plan, and the development of an implementation schedule. PG&E also has engaged in site acquisition, site development, and connectivity work. Although certain aspects of these activities remain subject to change, PG&E intends to implement the system expeditiously.

Furthermore, PG&E has assigned a number of 800 MHz licenses that it formerly held as part of this transaction because these frequencies will not be needed in PG&E's new network. The FCC has considered the voluntary return of unconstructed or unneeded licenses as evidence that a licensee has no intention to hoard spectrum.[11] Although PG&E is not returning these licenses to the FCC for cancellation, it is assigning its 800 MHz frequencies to another licensee that intends to use the frequencies in its operations.

The FCC has previously noted that the transition to spectrum-efficient technology warrants a waiver of the discontinuance rules.[12] In a Second Order on Reconsideration, the FCC clarified that the discontinuance rule would not apply to wide-area Specialized Mobile Radio ("SMR") licensees that replace their high-power analog systems with low-power digital sites.[13]

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[10] Id.

[11] In re PageAmerica of New York, Inc., File No. CWD-95-6, Order, 10 FCC Rcd 8703, 8704 ¶ 9 (1995); Danny's Two Way Communications, 9 FCC Rcd at 3193 ¶ 13.

[12] E.g., In re County of Mecklenburg, File No. 0002443428, Order, 21 FCC Rcd 7213 ¶ 6-7 (2006) (holding that a waiver would not frustrate the underlying purpose of the discontinuance rule because the licensee would deploy a digital communications system "'directed toward improvements in the quality of communications, more efficient use of spectrum resources and providing interoperability among agencies'") [hereinafter Mecklenburg County]; BRS/EBS Report and Order, 19 FCC Rcd at 14254, ¶ 232-33, 14256 ¶ 239 (eliminating the discontinuance rule to permit certain BRS and EBS licenses because the goal of deploying "innovative and efficient communications technologies and services" "cannot be readily accomplished if BRS and EBS licensees fear losing their authorization if the discontinuance of service and forfeiture rules are not eliminated."

[13] 900 MHz Second Order on Reconsideration, 11 FCC Rcd at 2662 ¶ 56.

Although the conversion process would require SMR licensees to take their base stations out of operation for a period of time, the FCC indicated that it would "deem all the base stations that comprise the system to be "in operation."[14] The FCC explained that "permitting SMR licensees to undergo conversion to multiple low power sites increases spectrum efficiency, and poses little risk of spectrum warehousing."[15] The Commission has also adopted a number of rules and policies to provide greater flexibility and innovation in traditional CMRS bands.[16]

PG&E will similarly convert to a new innovative technology that increases spectrum efficiency. In particular, PG&E will replace the former licensees' commercial systems with a next-generation, spectrum-efficient, voice system. The conversion to this new system will permit the use of narrowband technology and employ frequency re-use, resulting in an increase in capacity over the former licensees' systems. PG&E will also operate the system through a centralized switching facility that will provide seamless roaming on mobile units throughout its service area.

The cancellation and re-licensing of PG&E's licenses would likely cause greater delay in the use of this spectrum. PG&E plans to initiate operations on most of these licenses during the early phases of its radio system deployment. Under the current frequency plan, PG&E envisions completing installation of about half the system by 2Q2011. Thus, a waiver of the discontinuance rules will help to fulfill the FCC's policy objectives of vigorous spectrum use, rapid deployment of innovative and efficient communications technologies, and placing the spectrum to its highest and best use.

Moreover, the trend toward flexible and innovative use of spectrum supports the waiver of the discontinuance rules for PG&E. If the FCC were to grant a waiver, PG&E could put these geographic-area licenses to the "highest and best use" by upgrading them from the existing paging systems to implement a next-generation, spectrum-efficient system for utility communications.

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[14] Id.

[15] Id.

[16] See, e.g., In re Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, WT Docket No. 03-103, Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 4403, 4445-54 ¶ 99-133, 4456-63 ¶ 141-64 (2005); In the Matter of Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, WT Docket 96-6, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8965, 8977 ¶ 24 (1996); In re Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket No. 92-116, Report and Order, 9 FCC Rcd 6513, 6519 ¶ 25, 6527-28 ¶ 67-70. (1994).

B. The Grant of a Waiver Would Be in the Public Interest

The public interest supports a waiver of the discontinuance rules because these licenses will comprise an integral part of PG&E's new wide area radio system. If these licenses were to terminate automatically for discontinuance of operations, PG&E's deployment of a fully integrated, innovative system throughout its service area would be impaired.

In Mecklenburg County, the FCC waived the discontinuance rule after finding that the multi-year radio project would improve the reliability and interoperability of public safety communications.[17] The licensee had expended "considerable engineering and technical effort" to deploy an 800 MHz digital voice communications system for public safety personnel.[18] The system was "'directed toward improvements in the quality of communications, more efficient use of spectrum resources and providing interoperability among agencies.'"[19] Thus, the FCC concluded that a waiver would ensure that the licensee has the flexibility to implement the new radio system.[20]

Although PG&E does not operate a traditional public safety system, the federal government has repeatedly recognized the importance of "public safety radio systems," such as communications systems that support utility operations. In 1982, Congress expressed a policy of supporting the special needs of utilities in their attempts to meet legitimate telecommunications requirements:

> In managing spectrum, the FCC . . . first should attempt to meet the requirements of those radio users which render important services to large groups of the American public, such as governmental entities and utilities, rather than the requirements of those users which would render benefits to relatively small groups.[21]

Congress has even enacted legislation to protect the communications systems of utilities, such as PG&E, that are public safety radio service licensees. In 1997, Congress passed legislation in an effort to ensure that the communications systems of public safety radio services would not be compromised.[22] This clearly indicates that the protection of the communications systems of a

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[17] 21 FCC Rcd 7213 ¶ 6-7.

[18] Id. ¶ 7.

[19] Id.

[20] Id.

[21] S. Rep. No. 191, 97th Cong., 2d Sess. (1982), reprinted in 1982 U.S.C.C.A.N. 2237, 2250 (emphasis added).

[22] 47 U.S.C. § 309(j)(2) (defining "public safety radio services" to include private internal radio services used by non-government entities); House Conf. Rep. No. 105-217, at 572 (1997),

(continued...)

public safety radio service is in the public interest and demonstrates that Congress realizes that utilities serve the public interest.

The FCC has recognized that utilities are part of the nation's critical infrastructure and need reliable communications facilities to fulfill their public service obligations.[23] For example, in the 800 MHz Report and Order, the FCC concluded that "the very nature of services provided by . . . [utilities] involves potential hazard to life and property" and that utilities "often work hand-in-hand with Public Safety officials at the scene or an incident" and that reliable [utility] radio communications have long proven essential in speeding recovery from natural or man-made disasters."[24] The National Telecommunications and Information Administration ("NTIA") has also acknowledged the importance of utility uses of spectrum, releasing a report on utility use of spectrum in which it concluded that utilities provide a public service and are vital components of the Nation's critical infrastructure[25] and that "continued use of spectrum is essential to the current and future operations" of utilities.[26]

As in Mecklenburg County, PG&E has invested several years in a radio project involving considerable engineering and technical effort to replace an existing analog radio system with a digital communications system. PG&E and Mecklenburg County also share the same goals of improved quality of communications, more efficient use of spectrum, and an integrated communications system.

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reprinted in 1997 U.S.C.C.A.N. 176, 192 (stating that section 309(j)(2) covers "'private internal radio services' used by utilities, railroads, metropolitan transit systems, pipelines, private ambulances, and volunteer fire departments").

[23] 800 MHz Report and Order, 19 FCC Rcd at 14974 ¶ 4 n.11; e.g., In re The 4.9 GHz Band Transferred from Federal Use, WT Docket No. 00-32, Second Report and Order and Further Notice of Proposed Rule Making, 17 FCC Rcd 3955, 3971 ¶ 33 (2002) ("The very nature of the services provided by [utilities] involve potential hazards, or responding to emergency circumstances. Furthermore, such entities need reliable communications in order to prevent or respond to disasters or crises affecting their service to the public. We also recognize that in the course of their duties, these entities will need to interact with the traditional public safety service providers, and the inability to do so may affect the ability of both groups of public safety entities to fulfill their missions.").

[24] 800 MHz Report and Order, 19 FCC Rcd at 14974 ¶ 4 n.11.

[25] Marshall W. Ross and Jeng F. Mao, Current and Future Spectrum Use by the Energy, Water, and Railroad Industries, Response to Title II of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001 Pub. L. 106-553, NTIA Special Publication 01-49, at 3-3 (Jan. 30, 2002).

[26] Id. at xvii. The NTIA found that utilities use spectrum to (1) make emergency repairs, (2) comply with existing state and federal service requirements, and (3) efficiently and safely conduct their daily activities. Id. at 3-3, 3-8.

The Radio System will also greatly reduce communications and response times across PG&E's service area, better equipping PG&E to respond to emergencies and to engage in day-to-day maintenance of the electric and gas transmission and distribution systems. Furthermore, the absence of harmful interference will help protect the safety of PG&E's employees as they work around high-voltage electrical lines and high-pressure gas lines. Thus, as in Mecklenburg County, a waiver would ensure that PG&E has the flexibility to make necessary improvements to its system.

The public interest also supports a waiver of the discontinuance rules to avoid the wasteful allocation of resources to an obsolete system. The FCC has previously granted waivers to prevent licensees from having to provide non-viable services on geographic-area licenses while either changing the type of service after an assignment or implementing innovative technologies.[27]

PG&E should not be required to install obsolete analog equipment merely to preserve these geographic-area licenses. As mentioned above, PG&E acquired these licenses through license assignments. PG&E intends to convert the assigned licenses from common carrier to non-common carrier service for use in a private, internal radio system in support of its utility operations. Thus, for PG&E's intended purposes, the continued provision of common carrier service is neither a viable use of this spectrum nor in the public interest.

PG&E also plans to implement innovative technology on these licenses. As part of the larger project to replace its entire radio system, PG&E has entered into a contract to purchase next-generation, spectrum-efficient, digital voice and data equipment that will accommodate a mixture of Part 22 and Part 90 spectrum. Even though PG&E will implement this new equipment as soon as possible, it must discontinue operations for a period of time. The period of discontinuance will vary depending on the particular license and the site location. Attached as Exhibit B hereto is an implementation plan that illustrates how PG&E intends to roll out the new system over the next three years.[28]

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[27] BRS/EBS Report and Order, 19 FCC Rcd at 14256 ¶ 239; Winstar Wireless, 14 FCC Rcd at 120 ¶ 4.

[28] PG&E is separately request a waiver of Section 90.155 of the FCC's Rules to permit "slow growth" implementation of new or modified Part 90 site-based licenses that will be part of the wide area system.

C. Application of the Discontinuance Rules Would Be Inequitable, Unduly Burdensome and Contrary to the Public Interest

In the BRS/EBS Report and Order, the FCC eliminated the discontinuance rule for certain BRS and EBS licenses.[29] The FCC stated that the elimination of this rule would provide licensees "with greatly enhanced flexibility in order to encourage the highest and best use of spectrum to provide for the rapid deployment of innovative and efficient communications technologies and services."[30] The FCC noted that licensees could not readily deploy innovative services if they "have to focus their resources on preserving legacy services."[31]

PG&E requires a waiver of the discontinuance rules to avoid incurring inequitable and unduly burdensome costs. As mentioned above, PG&E intends to replace the former licensee's analog paging equipment with next-generation digital voice and data equipment. If the FCC were to deny the waiver request, PG&E would incur the unnecessary costs of having to acquire and/or maintain equipment for at least periodic operation on all of the frequencies pending the system rebuild, and then PG&E would have to remove that equipment once the new equipment is available and operational. This effort would be a serious distraction from PG&E's massive construction project, and would provide no corresponding benefit other than to maintain compliance with the discontinuance of operation Rules from a purely technical standpoint.

III. Conclusion

For all of the foregoing reasons, PG&E respectfully requests a waiver of sections 1.955(a)(3), 22.317 and 90.157(a) of the FCC's rules to permit the discontinuance of station operations on certain geographic-area Paging and Radiotelephone Service licenses and certain Part 90 site-based licenses.

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[29] BRS/EBS Report and Order, 19 FCC Rcd at 14254, ¶ 233, 14256 ¶ 239.

[30] Id. at 14254 ¶ 232.

[31] Id. at ¶ 233.

Exhibit A
Licenses for Which Waiver of the Discontinuance Rules is Requested

Part 22 Geographic Area Licenses:

Call Sign	BEA	Channel Block
WPVE245	163	GA
WPVE246	163	GD
WPVE247	163	GE
WPVE248	163	GF
WPVE249	163	GG
WPVE250	163	GH
WPVE251	163	GI
WPVE252	163	GK
WPVE253	163	GL
WPVE255	163	GP
WPVE256	163	GQ
WPVE257	163	GR
WPVE258	163	GS
WPVE259	163	GT
WPVE260	163	GU
WPVE261	163	GV
WPVE262	163	GW
WPVE263	163	GX
WPVE264	163	GY
WPVE265	163	GZ
WPVE271	164	GA
WPVE272	164	GC
WPVE273	164	GD
WPVE274	164	GE
WPVE275	164	GG
WPVE276	164	GI
WPVE277	164	GJ
WPVE278	164	GK
WPVE279	164	GL
WPVE280	164	GN
WPVE282	164	GP
WPVE283	164	GQ
WPVE284	164	GR
WPVE285	164	GS
WPVE286	164	GT
WPVE287	164	GU

WPVE288	164	GV
WPVE289	164	GW
WPVE290	164	GX
WPVE291	164	GY
WPVE292	164	GZ
WPZG955	165	GA
WPZG956	165	GH
WPZG957	165	GG
WPZG958	165	GF
WPZG959	165	GD
WPZG960	165	GQ
WPZG961	165	GE
WPZG962	165	GS
WPZG963	165	GR
WPZG964	165	GW
WPZG965	165	GV
WPZG966	165	GU
WPZG967	165	GT

Part 90 Site-Based Licenses:

Call Sign	Radio Service Code
WNGE426	IK
WNPO876	IK
WNUP745	IK
WNVB951	IK
WPKG718	IG
WPNR562	YG
WPPB889	YG
WPPC823	YK
WPUA857	YG
WPUP298	YG
WPUP520	YG
WPUP822	YG
WPUP987	YG
WPUQ576	YG
WPUR310	YG
WPUS949	YG
WPVD230	YG
WPVI954	YK

WPVI955	YK
WPVK247	YG
WPVK364	YG
WPVK521	YK
WPVK522	YK
WPVL391	YK
WPVL550	YG
WPVN843	YK
WPVN847	YK
WPVN848	YK
WPVN851	YK
WPVN853	YK
WPVP651	YG
WPVP759	YG
WPVP913	YK
WPVP914	YK
WPVP915	YK
WPVP916	YG
WPVP917	YK
WPVP920	YK
WPVP921	YK
WPVP922	YK
WPVP924	YK
WPVP925	YK
WPVQ746	YG
WPVQ897	YG
WPVR264	YG
WPVR512	YK
WPVR515	YK
WPVR519	YK
WPVR844	YG
WPVR845	YG
WPVS696	YG
WPVS794	YK
WPVS795	YK
WPVS818	YG
WPVS833	YG
WPVT571	YG
WPVU239	YG
WPVU597	YG
WPVU619	YG
WPVW313	YG

WPVY664	YG
WPVY972	YK
WPVY973	YK
WPWA337	YG
WPWB739	YG
WPWC321	YG
WPWC926	YG
WPWE652	YG
WPWE978	YG
WPWG453	YG
WPXB863	YG
WPXC391	YG
WPXC566	YG
WPXD775	YG
WPXG271	YG
WPXT611	YG
WPYV468	YG
WPYZ552	IG
WQEN965	YG

Exhibit B
Proposed Implementation Plan

Phase	Description	Time Frame
Phase I	Install 20 repeater sites, 2 radio-over-IP (RoIP) console positions, 30 radio control units, 300 mobiles, and 100 portables	2Q2009 – 4Q2010
Phase II	Install 25 repeater sites, 11 RoIP console positions, 30 radio control units, 350 mobiles, and 75 portables.	2Q2010 – 3Q2011
Phase III	Install 30 repeater sites, 35 radio control units, 325 mobiles, and 150 portables.	3Q2010 – 4Q2011
Phase IV	Install 33 repeater sites, 200 RoIP console positions, 400 radio control units, 3000 mobiles and 2000 portables.	2Q2011 – 4Q2012*
Phase V	Undertake coverage and capacity tuning, decommission old systems, finalize business processes, conduct field training on new system.	4Q2011 – 4Q2012*

* Although PG&E's implementation plan calls for all new sites to be activated by the end of 2012, PG&E is respectfully requesting authority to discontinue operations through June 30, 2013, just to provide some additional time in case there are any unforeseen contingencies that might delay the overall implementation plan.

EXPLANATION OF APPLICATION

Pacific Gas and Electric Company ("PG&E") is requesting modification of license to change the regulatory classification from "Common Carrier" to "Private, Internal Communications," and to request waiver of the discontinuance rules in Sections 1.955(a)(3) and 90.157(a).

As explained more fully in the accompanying Request for Waiver of Discontinuance Rules, PG&E has acquired a number of radio licenses that were issued under FCC Rule Parts 22 and 90. PG&E is in the process of designing and implementing a wide area Private Land Mobile Radio ("PLMR") network using these frequencies to support its provision of natural gas service to approximately 4.2 million accounts and its provision of electric service to approximately 5.1 million accounts. PG&E will use the frequencies solely for Private Mobile Radio Service ("PMRS") and will not use these frequencies to offer mobile radio service to the public for a fee as a provider of Commercial Mobile Radio Service ("CMRS"). Because some of the licenses PG&E acquired are currently classified as "Common Carrier" (Radio Service Code IK or YK), PG&E is hereby requesting modification of license to change the regulatory classification to "Private, Internal Communications" (Radio Service Code IG or YG).[1]

[1] Pursuant to the FCC staff's recommendation, PG&E is initially filing its request for waiver of the discontinuance rules only with respect to a few call signs under Parts 22 and Part 90. Upon FCC approval of the waivers and license modifications for these initial call signs, PG&E will file identical waiver requests and license modification applications for all other licenses identified in the accompanying Request for Waiver. PG&E will also request modification of all licenses currently classified as "Common Carrier" (Radio Service IK or YK) to change the classification to Private, Internal Communications (Radio Service IG or YG).

REQUEST FOR WAIVER
OF COMMON CARRIER REQUIREMENT

Pursuant to section 1.925 of the Federal Communications Commission's ("FCC") rules,[1] PG&E hereby requests a waiver of section 20.9(a)(6) to permit the use of Part 22 Paging and Radiotelephone Service frequencies for private, internal operations. As set forth more fully below, the requested relief should be granted because it would not frustrate the underlying purpose of the rule, would serve the public interest, and would avoid imposing an inequitable and unduly burdensome obligation on PG&E.

A. Background

Headquartered in San Francisco, California, PG&E is one of the largest combination natural gas and electric utilities in the United States. PG&E provides natural gas service to approximately 4.2 million accounts, and electric service to approximately 5.1 million accounts, representing approximately 15 million people throughout PG&E's more than 74,000 square mile service territory in northern and central California. PG&E operates over 123,000 circuit miles of electric distribution lines, over 18,000 circuit miles of interconnected electric lines, over 40,000 miles of natural gas distribution pipelines and over 6,000 miles of natural gas transportation pipelines.

To support its safe and reliable provision of electric and natural gas service to the public over these extremely large areas, PG&E operates one of the largest privately owned and operated land mobile radio systems in the state of California. PG&E has two-way mobile radio systems operating in 47 of the 58 northern and central California counties, covering more than 74,000 square miles of PG&E's service territory. PG&E's two-way radio networks currently consist of more than 4,000 mobile and handheld (portable) radio units, more than 168 main transmitter sites and almost 30 large console control dispatch locations. Furthermore, there are approximately 300 small radio control stations located at service centers and control center locations used to access PG&E's various radio systems by supervisory and administrative personnel using desk set/remote control units. In addition to the gas and electric distribution and transmission operations, PG&E radio systems support extensive hydroelectric watershed and plant operations.

PG&E's various internal Lines of Business (*i.e.*, Gas & Electric Distribution, Gas & Electric Transmission, Hydro Generation, Customer Care and General Services) currently operate on discrete radio systems that are in need of replacement. These radio systems operate in disparate frequency bands (48 MHz, 150 MHz, 450 MHz, and 800 MHz) and function autonomously from one another. This inhibits interoperability among the Lines of Business, and

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[1] 47 C.F.R. § 1.925 (2008).

does not readily permit introduction of advanced service features needed by PG&E's service personnel. The growth of these disparate systems over time created a condition where it became increasingly difficult for the company to migrate trucks and crews into an area in order to mobilize and assist during major storm events. Hours of effort were required to replace and reprogram radios to allow field crews to assist other teams, and in cross-connecting the various consoles together in order to link the various teams together.

In order to address the shortcomings of its current land mobile radio network, PG&E undertook an extensive analysis of its existing communications assets, outage management data, and user requirements in order to improve the company's ability to respond to storm and fire conditions, and also to improve efficiency of routine operations throughout the company. Based on this analysis, PG&E's management initiated the Radio Network Refresh Project to develop a common communications platform on which all Lines of Business can rely.

PG&E's Radio Network Refresh Project will replace PG&E's (4) conventional voice mobile radio systems with a single integrated trunked radio network for all of the company's "push to talk" dispatch voice services. A single infrastructure system will improve quality and reliability of services; enhance security, simplify network management and operations, and lower overall operational costs by eliminating parallel systems. The new integrated trunked radio network will operate on a single (450 MHz) frequency band and will provide common "push to talk" voice services to all of PG&E's various Lines of Business.

Unlike PG&E's current legacy radio systems, the new networked radio repeater sites will be connected to centralized switching equipment to provide wide-area voice connectivity and enhanced radio services. Furthermore, the centralized switching equipment will provide system and network management services for controlling access to the system, determining performance levels of service, and configuring repeater radio sites and end-user equipment.

Because no spectrum has been specifically allocated or reserved for utility operations such as this, PG&E was required to seek out a sufficient quantity of spectrum in the 450 MHz band from existing licensees, including a number of Part 22 Paging and Radiotelephone Service licenses. PG&E believes it has obtained a sufficient number of 450 MHz channels in order to migrate all of its existing land mobile services onto one frequency band.

To use these Part 22 frequencies on a private, internal basis, PG&E requests a waiver of section 20.9(a)(6) of the FCC's rules. Section 20.9(a)(6) provides that the Paging and Radiotelephone Service is one of the mobile services that "shall be treated as common carriage services and regulated as commercial mobile radio services."[2] To the extent that PG&E is authorized to conduct private, internal operations on these frequencies, it would not meet the definition of "commercial mobile radio service" (*i.e.*, it would not offer service to the public for

[2] 47 C.F.R. § 20.9(a)(6).

profit or be the functional equivalent of commercial mobile radio service)[3] and regulating it as such (1) would not further the underlying purpose of the rule, (2) would not serve the public interest, and (3) would be inequitable, unduly burdensome, and contrary to the public interest.

The FCC may grant a waiver of its rules when (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (2) in view of the unique or unusual circumstances of the case, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.[4] This waiver request meets these standards and should be granted.

A. Waiver of the Common Carrier Requirement Would Not Frustrate the Underlying Purpose of the Rule

The application of the common carrier requirement would not serve the underlying purpose of the Part 22 Paging and Radiotelephone Service rules. This requirement is a vestige of a prior regulatory environment and is no longer necessary to promote competition in the paging industry. The emergence of new competitors and services has obviated the need for restricting the use of Paging and Radiotelephone Service frequencies to common carriers.

The common carrier requirement also directly conflicts with congressional and FCC efforts to provide more flexibility for wireless operations. Although these efforts have occurred over more than a decade, the FCC recently manifested this deregulatory spirit in its Part 22 rulemaking proceeding. In a *Report and Order*, the FCC removed all references to the term "common carrier" from the Part 22 rules, including those in sections 22.1(b), 22.3(b), 22.7, 22.99, 22.351, 22.401, and 22.1003.[5] When the FCC proposed this amendment to the Part 22 rules, it explained that the common carrier requirement had "become obsolete as a result of meaningful economic competition among providers of wireless services."[6] The FCC further noted that this requirement was inconsistent with the open eligibility for other wireless services and, thus, conflicted with the regulatory parity policies for such services.[7] This trend toward

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[3] *Id.* § 20.3.

[4] *Id.* § 1.925.

[5] In re Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, WT Docket No. 03-103, *Report and Order and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 4403, 4446 ¶ 101, 4447 ¶ 103, 4450 ¶ 113-114, 4464 ¶ 168 (2005).

[6] In re Biennial Regulatory Review – Amendment of Parts 1, 22, and 90 of the Commission's Rules, WT Docket No. 03-103, *Notice of Proposed Rule Making*, 18 FCC Rcd 8380, 8383 ¶ 5 (2003).

[7] *Id.* at 8392-94 ¶ 28-30.

flexible use supports the grant of a waiver to permit PG&E to conduct private, internal operations on its Paging and Radiotelephone Service frequencies.

B. Grant of a Waiver Would Be in the Public Interest

A waiver of section 20.9(a)(6) would also serve the public interest. As set forth above, PG&E intends to use the Paging and Radiotelephone Service frequencies in support of its utility operations. These proposed operations will have a direct beneficial impact on the public by assisting PG&E in maintaining the safety and reliability of the electric grid.

Furthermore, a waiver would help to fulfill the FCC's policy objectives. In particular, if the FCC were to permit the use of this spectrum for private, internal operations, it would encourage growth and rapid deployment of innovative and efficient communications technologies. A waiver would also increase the overall use of the spectrum. When the FCC initially auctioned the Paging and Radiotelephone Service frequencies in 2001, thousands of licenses remained unsold. Even when the FCC re-auctioned the spectrum in Auction No. 48, a number of licenses only had one bidder. Because of the underutilization of these frequencies, a waiver of the common carrier requirement would ensure that this spectrum is put to its highest and best use.

C. Application of the Common Carrier Requirement Would Be Inequitable, Unduly Burdensome and Contrary to the Public Interest

The FCC should grant a waiver of the common carrier requirement to avoid imposing an inequitable and unduly burdensome obligation on PG&E. As discussed above, the FCC already expunged the common carrier requirement from its Part 22 rules. If the FCC were to decline to grant a waiver for the licenses in the associated assignment applications, it would contravene the amended Part 22 rules and prevent PG&E from incorporating these frequencies into its private land mobile system in support of its utility operations.

D. Conclusion

PG&E respectfully requests a waiver of section 20.9(a)(6) of the FCC's rules to use Part 22 Paging and Radiotelephone Service frequencies in support of its utility operations. As mentioned above, a waiver of the common carrier requirement would not frustrate the purpose of the rule because it represents an outdated and unnecessarily limited means of administering spectrum. The application of the common carrier requirement would also not serve the public interest and would be inequitable, unduly burdensome, and contrary to the public interest.

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